

support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on April 21, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Arkansas, Louisiana, Oklahoma, and Texas should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 95-8469 Filed 4-5-95; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Parts 906, 931, and 944

Colorado, New Mexico, and Utah Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Colorado, New Mexico, and Utah underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments of SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Colorado, New Mexico, and Utah regulatory programs (herein after referred to as the "State programs" currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Colorado, New Mexico, and Utah and consideration of public comments, OSM will decide whether initial enforcement in each of these States will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., m.d.t. on May 8, 1995. If requested, OSM will hold a public hearing on May 1, 1995, concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions,

should be implemented in Colorado, New Mexico, and Utah. Requests to speak at the hearing must be received by 4:00 p.m., m.d.t. on April 21, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Thomas E. Ehmett, Acting Director, Albuquerque Field Office at the address listed below.

Copies of the applicable parts of the Colorado, New Mexico, and Utah programs, SMCRA, the implementing Federal regulations, information provided by Colorado, New Mexico, and Utah concerning their authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette NW., Suite 1200, Telephone: (505) 766-1486.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 102-486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with

these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance standards of sections 720(a)(1) and (2) SMCRA (60 FR 16722-16751).

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in

the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory

or regulatory provisions until the State adopts and OSM approves, under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item number (1) above, OSM could decide not to initiate direct Federal enforcement and rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also enforce the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Colorado

By letter to Colorado dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in Colorado to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Colorado program provisions (Administrative Record No. CO-652). By letter dated February 23, 1995, Colorado responded to OSM's request (Administrative Record No. CO-661).

Colorado stated that permits were issued for 25 underground coal mines after October 24, 1992, and 11 of those

mines actually mined coal after October 24, 1992.

Colorado indicated that prior to June 1, 1992, Colorado had in place surface owner protection performance standards at 2 Code of Colorado Regulations 407-2, Rules 4.20.3(1) and 4.20.3(2) that encompassed the requirements of section 720(a)(1) of SMCRA. Rule 4.20.3(2), which contained requirements regarding an operator's obligation to repair or compensate for material damage or reduction in value or reasonably foreseeable use caused by subsidence to surface structures, features, or values, expired on June 1, 1992, under Colorado's "Sunset Law." The rule expired because Colorado's Office of Legislative Legal Services found during November 1991 it was not supported by statute. Colorado subsequently developed language for a bill to amend the Colorado Surface Coal Mining and Reclamation Act (the Colorado Act) and introduced the bill during the 1995 legislative session. The intent of the bill is to amend section 34-33-121(2)(a) to provide specific statutory support for Rule 4.20.3(2). Colorado has not yet formally submitted this amendment to OSM for review under 30 CFR 732.17.

Colorado explained that, although the specific language of Rule 4.20.3(2) expired during June 1992, the Division of Minerals and Geology has continued since that time to interpret its rules to require that mine operators are responsible for repairing or compensating surface owners for subsidence-caused material damage to structures. Colorado based its authority for doing so on the general provisions of Rule 4.20.3(1) and the subsidence control plan mitigation requirements of Rule 2.05.6(6)(iv).

Colorado indicated that there may be a conflict between the provisions of section 720(a)(2) of SMCRA, which requires prompt replacement of drinking, domestic, or residential water supplies adversely impacted by underground mining operations, and Colorado water law. Consequently, Colorado has requested an opinion from the Colorado Assistant Attorney General in this regard. Existing Colorado Rule 4.05.15 requires operators to "replace the water supply of any owner of a vested water right which is proximately injured as a result of the mining activities in a manner consistent with applicable State law" (emphasis added).

For underground mining operations conducted after October 24, 1992, Colorado has received one complaint alleging subsidence-related structural damage and two complaints alleging

subsidence-related water supply loss or contamination. Colorado investigated all three complaints. Colorado determined the complaint alleging subsidence-caused structural damage to be without basis. One of the complaints alleging subsidence-related water supply loss or contamination was withdrawn, and the second is currently under investigation by Colorado.

D. Enforcement in New Mexico

By letter to New Mexico dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in New Mexico to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart New Mexico program provisions (Administrative Record No. NM-725). By letter dated December 22, 1994, New Mexico responded to OSM's request (Administrative Record No. NM-726).

New Mexico stated that two underground coal mines were active in New Mexico after October 24, 1992. New Mexico stated that, because its existing provision at Coal Surface Mining Commission (CSMC) Rule 80-1-20-124 does not include requirements no less stringent than section 720 of SMCRA, it intended to revise this rule to read as follows:

Each person who conducts underground mining which results in subsidence shall:

(a) Promptly repair, or compensate for, material damage resulting subsidence caused to any occupied residential dwelling and structures related thereto, or non-commercial building due to underground coal mining operations. Repair of damage shall include rehabilitation, restoration, or replacement of the damaged structures.

Compensation shall be provided to the owner and shall be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to underground mining which results in damage of the structures, of a noncancellable premium-prepaid insurance policy.

(b) Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground mining operations. Nothing in this section shall be construed to prohibit or interrupt underground coal mining operations.

New Mexico did not indicate whether it currently has the authority within its program to investigate citizen complaints of structural damage or water supply loss or contamination caused by underground mining operations conducted after October 24, 1992. New Mexico has not received any

citizen complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. New Mexico indicated that both of the underground mines that operated after October 24, 1992, are located several miles from structures subject to the Federal requirements for subsidence-related material damage.

E. Enforcement in Utah

By letter to Utah dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in Utah to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Utah program provisions (Administrative Record No. UT-1001). By letter dated January 20, 1995, Utah responded to OSM's request (Administrative Record No. UT-1015).

Utah stated that the number of underground coal mines in operation after October 24, 1992, may be found in the past and current grant applications filed annually with OSM. From review of these grant applications, OSM determined that there are approximately 21 underground mines that operated after October 24, 1992.

As submitted to OSM on April 14, 1994, and subsequently revised on December 14, 1994 (Administrative Record Nos. UT-917 and UT-997), Utah proposed subsidence material damage provisions at Utah Code Annotated 40-10-18(4) that were intended to be counterparts to the provisions to the provisions of section 720(a)(1) of SMCRA. OSM has not yet published, in accordance with 30 CFR Part 732.17, a final rule **Federal Register** notice detailing its decision on the proposed provisions.

In its January 20, 1995, letter, Utah indicated that it intends to promulgate by March 1996 water replacement statutory provisions that are counterparts to the provisions of section 720(a)(2) of SMCRA.

Utah did not state whether it has authority to investigate citizen complaints of structural damage or water loss caused by underground mining operations conducted after October 24, 1992. Utah indicated that it did receive, investigate, and resolve one citizen complaint after October 24, 1992, but it also indicated that the complaint was judged not to be one that the Energy Policy Act of 1992 revisions to section 720 of SMCRA could remedy.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Colorado, New Mexico, and Utah to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., mst on April 21, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Colorado, New Mexico, or Utah should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may

request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 95-8468 Filed 4-5-95; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Parts 915, 916, and 925

Iowa, Kansas, and Missouri Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Iowa, Kansas, and Missouri underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to SMCRA and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if Iowa's, Kansas', and Missouri's regulatory programs (hereinafter referred to as the "Iowa, Kansas, and Missouri programs") currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Iowa, Kansas, and Missouri and consideration of public comments, OSM will decide whether initial enforcement in Iowa, Kansas, and Missouri will be accomplished through the State Program amendment process or by State enforcement, by interim direct OSM

enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., c.d.t. on May 8, 1995. If requested, OSM will hold a public hearing on May 1, 1995, concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Iowa, Kansas, and Missouri. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t. on April 21, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Michael C. Wolfrom, Acting Director, Kansas City Field Office at the address listed below.

Copies of the applicable parts of the Iowa, Kansas, and Missouri programs, SMCRA, the implementing Federal regulations, information provided by Iowa, Kansas, and Missouri concerning their authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays.

Michael C. Wolfrom, Acting Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, MO 64105, Telephone: (816) 374-6405.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Acting Director, Kansas City Field Office, Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 102-486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires